

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :

 v. : CRIMINAL NO. 02-00225-01

BARRY WILF :

GOVERNMENT'S PLEA MEMORANDUM

I. INTRODUCTION

On April 11, 2002, Barry Wilf was named in an indictment charging him with one count of conspiracy to commit bank fraud and mail fraud, in violation of 18 U.S.C. § 371; 34 counts of mail fraud, in violation of 18 U.S.C. § 1341; one count of bank fraud, in violation of 18 U.S.C. § 1344; five counts of tax evasion, in violation of 26 U.S.C. § 7201; and five counts of making false statements on tax returns, in violation of 26 U.S.C. § 7206(1). The charges stem from a theft of approximately \$1.2 million from Temple Sinai in Dresher, Pennsylvania, while Wilf was the executive director of that synagogue.

The government and Wilf have entered a plea agreement in which Wilf agrees to plead guilty to certain

charges in the indictment.

II. PLEA AGREEMENT

A copy of the written plea agreement entered into by the government and Wilf is attached to this memorandum as Exhibit A. In that plea agreement, Wilf agrees to plead guilty to Count Two, charging bank fraud; Count Three, charging mail fraud; and Count Fifty-Three, charging tax evasion. The government agrees to move to dismiss at the time of sentencing all other charges asserted against Wilf in the indictment.

The bank fraud and mail fraud charges to which Wilf is pleading guilty encompass all of the alleged theft in this case. The tax evasion charge to which Wilf is pleading guilty involves the 1999 tax year. However, Wilf stipulates that he committed the tax evasion offenses stated in the indictment regarding tax years 1995 through 1998 as well, and that the sentencing guideline calculation may be based on all of this conduct.

With respect to the guidelines, the parties agree as follows, applying the November 1, 1999 edition of the guidelines:

-- With respect to the convictions for bank fraud and mail fraud, stated in Counts Two and Three:

(1) The offenses involved a loss of approximately \$1.2 million, resulting in a base offense level of 17 pursuant to Section 2F1.1 of the Sentencing Guidelines.

(2) The offense level should be increased by 2 because the offenses involved more than minimal planning, as stated in Section 2F1.1(b)(2)(A).

(3) The offense level should be increased by 2 because the offenses involved a misrepresentation that the defendant, in accepting checks from donors to Temple Sinai which he misappropriated for his personal benefit, was acting on behalf of a religious organization, as stated in Section 2F1.1(b)(3)(A).

(4) The offense level should be increased by 2 for abuse of a position of trust, as stated in Section 3B1.3.

(5) The total offense level for the bank fraud and mail fraud offenses is 23.

-- With respect to the conviction for tax evasion, stated in Count 53, the government and the defendant

stipulate as follows:

(1) The offense, and related conduct, involved a tax loss of approximately \$168,000 in tax loss, resulting in a base offense level of 15 pursuant to Sections 2T1.1(a)(1) and 2T4.1.

(2) The offense level should be increased by 2 because more than \$10,000 of unreported income in a year came from proceeds of crime, as stated in Section 2T1.1(b)(1).

(3) The total offense level for the tax evasion offense is 17.

-- Pursuant to the grouping rules stated in Section 3D1.4, 1 level is added to the higher offense level, which is 23. That creates an offense level of 24.

-- A 2-level upward adjustment is warranted for attempted obstruction of justice, under Section 3C1.1, based on the defendant's efforts, after the federal investigation began, to cause an employee of Temple Sinai to provide false information to authorities and to remove pertinent records from the temple.

-- As of the date of the plea agreement, the defendant had demonstrated acceptance of responsibility for

his offense, making the defendant eligible for a 2-level downward adjustment under Section 3E1.1(a).

-- As of the date of the plea agreement, the defendant had assisted authorities in the investigation or prosecution of his own misconduct by timely notifying the government of his intent to plead guilty, making the defendant eligible for an additional 1-level downward adjustment under Section 3E1.1(b).

-- The final offense level is therefore 23.

The government reserves the right to make any recommendation regarding sentencing, and also reserves the right to comment on the relevant evidence and to correct any factual misrepresentations or misstatements made by or on behalf of the defendant at sentencing.

The plea agreement contains a waiver of Wilf's right to appeal or seek collateral review of the conviction and sentence. The Court is required by Federal Rule of Criminal Procedure 11(b)(1)(N) to address this waiver at the guilty plea hearing.

III. MAXIMUM PENALTIES

The maximum penalty applicable to each charge is as follows:

-- Bank fraud (18 U.S.C. § 1344) -- 30 years imprisonment, a term of supervised release of five years, a \$1,000,000 fine, and a special assessment of \$100.

-- Mail fraud affecting a financial institution (18 U.S.C. § 1341) -- 30 years imprisonment, a term of supervised release of five years, a \$1,000,000 fine, and a special assessment of \$100.

-- Tax evasion (26 U.S.C. § 7201) -- five years imprisonment, a term of supervised release of three years, a fine of \$250,000, and a special assessment of \$100.

The total maximum term pursuant to the plea is 65 years imprisonment, a term of supervised release of five years, a fine of \$2,250,000, and a special assessment of \$300.

In addition, should Wilf violate the conditions of any term of supervised release, he would face a maximum penalty of an additional three years in jail without credit for any time served on supervised release. 18 U.S.C. §§ 3559(a)(2), 3583(e)(3); see Fed. R. Crim. P. 11(c)(1)

(defendant must be advised of effect of term of supervised release).

IV. ELEMENTS OF THE OFFENSES

The elements of bank fraud, in violation of 18 U.S.C. § 1344, are:

1. The defendant executed a scheme or artifice to defraud a financial institution, or to obtain money belonging to or under the custody and control of a financial institution by means of false and fraudulent pretenses, representations, and promises;
2. The defendant acted knowingly and with intent to defraud; and
3. The financial institution was federally insured.¹

¹ The use of false signatures or endorsements on checks, in order to remove money from a bank, falls within the statute. See, e.g., United States v. Miller, 70 F.3d 1353, 1355 (D.C. Cir. 1995) (the use of another person's ATM card and personal identification code, which amounts to an "electronic signature," to remove money from a bank, falls within the statute as a false representation that the defendant had the authority to withdraw funds); United States v. Howard, 30 F.3d 871 (7th Cir. 1994) (conviction for bank fraud for putting checks in defendant's account with forged endorsements); United States v. Falcone, 934 F.2d 1528, 1541-42 (11th Cir. 1991) (unauthorized signature

The elements of mail fraud, in violation of 18 U.S.C. § 1341, are:

1. The existence of a scheme or artifice to defraud or to obtain money by false pretenses;
2. The use of the mails in furtherance of the fraudulent scheme; and
3. The defendant's participation in the scheme with knowledge of the fraudulent purpose.

See, e.g., United States v. Sturm, 671 F.2d 749, 751 (3d Cir. 1982); United States v. Pearlstein, 576 F.2d 531, 534

stamp placed on checks; conviction under § 1344(a)(2)), opinion reinstated, 960 F.2d 988 (11th Cir. 1992); Wiener v. Napoli, 772 F. Supp. 109, 119-20 (E.D.N.Y. 1991) (forged endorsement on check to obtain money from bank states claim under bank fraud statute in civil RICO case). As explained below, such conduct permeated this case, as the defendants used forged signatures to remove money from the temple's operating account, and an unauthorized endorsement of Temple Sinai to put checks in the Breakfast Club account.

The fact that the defendant's fraudulent intent may actually be directed against his employer, and not the bank, is irrelevant, where the scheme aims to take money in the bank's custody. See, e.g., United States v. Monostra, 125 F.3d 183, 186-88 (3d Cir. 1997) (it is no defense in bank fraud prosecution that defendant's actual intent was to harm the account holder and not the bank itself). Moreover, in this case, the conduct caused actual harm to federally insured banks; Summit Bank agreed to pay \$28,595.34 to the victim, and Harleysville National Bank is being sued and may be held accountable for much more.

(3d Cir. 1978). In addition, where, as here, the offense affected a financial institution, the maximum sentence is increased from five years to 30 years, and that factor must be treated as an element of the offense in order for the enhanced maximum to apply. See Apprendi v. New Jersey, 530 U.S. 466 (2000).

The elements of tax evasion, in violation of 26 U.S.C. § 7201, are:

1. The defendant evaded the payment of tax;
2. An additional tax was due and owing; and
3. The defendant acted willfully.

Sansone v. United States, 380 U.S. 343, 351 (1965); Spies v. United States, 317 U.S. 492, 498-99 (1943); Cheek v. United States, 498 U.S. 192, 195 (1991). The government need not establish, in a prosecution for tax evasion under Section 7201, the specific amount of tax evaded, merely that there was a substantial deficiency and that the defendant acted willfully. United States v. Johnson, 319 U.S. 503, 517 (1943); United States v. Bender, 606 F.2d 897, 898 (9th Cir. 1979); United States v. Rischard, 471 F.2d 105, 108 (8th Cir. 1973).

V. FACTUAL BASIS FOR THE PLEA

If this case were to proceed to trial, the United States would establish through documents and the testimony of witnesses that Wilf, while employed as the executive director of Temple Sinai in Dresher, Pennsylvania between July 1993 and February 2000, participated in the embezzlement of over \$1.2 million from the temple. The theft undoubtedly originated much earlier than July 1993, but that is as far back as available records permit the government to uncover the fraud.

A. Overview.

As executive director, Wilf was the chief operating officer of the temple, and responsible for all day-to-day activities other than those assigned to the rabbi. According to a written policy, the executive director's duties included serving as the "primary interface" with synagogue members and prospective members, "control[ling] all purchases and expenditures within budgetary limits," and "oversee[ing] management of accounts payable, accounts receivable, billing, and collection." He also supervised all office staff, which included the bookkeeper (co-defendant Betty Shusterman), receptionist/secretary, rabbi's

secretary, and part-time volunteers.

Wilf's first job after he completed his education was as an assistant to the executive director. He began in 1979, at the age of 23. He became the executive director in 1981. Wilf is currently 47 years old.

Betty Shusterman, currently 73 years old, was the temple's bookkeeper for over 35 years. A written policy stated that the bookkeeper is supervised by the executive director, and is responsible for maintaining all accounts and other typical bookkeeping functions. Her salary was approximately \$40,000 per year. She was assisted on a part-time basis by Barry Wilf's wife, Barbara.

All witnesses recount that Betty Shusterman and her husband, Jack, had a very close relationship with Wilf, similar to a parent-son relationship. In part, Wilf and the Shustermans participated together in a number of financial ventures apart from their employment at the temple. For instance, in the early 1990's the Wilfs and Shustermans, along with the Shustermans' son, Denis, together assumed control of Jewish delicatessens located in Melrose Park, Pennsylvania and New Britain, Pennsylvania. These ventures soon collapsed in debt and tax obligations, which both

families were required to fund in succeeding years.

On August 21, 1997, Barry Wilf, Betty Shusterman, Denis Shusterman, and others formed Orion Financial Services, LLC, for the purpose of operating as a securities broker-dealer. Orion then employed Denis as a certified public accountant and his father, Jack, as a stockbroker.

The evidence in this case demonstrates that Barry Wilf systematically and routinely stole funds of the temple, beginning as long ago as records allow the government to investigate, in 1993. As explained in more detail below, Wilf took the money in four primary ways: (1) he diverted donation and other checks to Temple Sinai to a separate account he controlled, under the name of "Temple Sinai Breakfast Club," from which he spent the proceeds; (2) he and Shusterman forged checks from the temple's operating account payable to "Temple Sinai," which he deposited in the Breakfast Club account; (3) he took checks from the operating account payable to various vendors and cashed them at cooperative banks; and (4) he and Shusterman took excess retirement contributions for themselves. While most of the money from all of this theft was removed in cash, some was used to pay the large bills for a joint cell phone account

which the Wilfs and Shustermans maintained for all their family members with Bell Atlantic.

The temple had an annual budget of approximately \$1.7 million, and was supported by membership dues and donations, and tuition paid to its religious schools. Wilf stole at least 10% of each year's budget during a six-year period. As a result, the temple was perpetually in financial distress, though the officers could not figure out why. At one point in 1998, all staff, from the rabbis to the preschool teachers, were required to take a 5% pay cut to make ends meet.

In retrospect, there were many warning signs. The temple was constantly in a financial crisis, despite the fact that it was one of the largest in the area, its membership peaking at 1,200 families. (It subsequently shrank to its current level of 800 families after its long-time rabbi departed in 1994.) It was perpetually behind on its bills.

Also revealing was that vendors would call the office constantly to complain and ask for their money. Both Wilf and Shusterman avoided the calls, and told staff members to give false excuses to put off the callers.

Marilyn Stock was a part-time employee who wrote the checks and gave them to Betty Shusterman to record and send. She recalls that the same vendors would call to whom she had written checks and given them to Shusterman; but Shusterman would not mail the checks, and when vendors later called looking for their money Wilf or Shusterman would tell her to say they were not in, and later explain that the temple simply did not have the money to cover the checks.

Also significant in retrospect is how Wilf and Shusterman handled the temple's accounts at Harleysville National Bank, where the illicit Breakfast Club account was located and where Wilf was frequently successful in cashing third-party checks from the temple to vendors. According to temple officer Alan Stock (Marilyn's son), in 1997 the bank opened new accounts at Summit Bank, after entering a lending relationship. The officers directed Wilf and Shusterman to close the Harleysville accounts and use Summit instead, but that did not happen for more than another year. Officers repeatedly asked Wilf and Shusterman why they persisted in using the Harleysville accounts, but received no straight answer.

Despite all this, the temple never conducted an

audit. The suggestion of an audit was raised periodically in board meetings, but Wilf and other officers consistently brushed off the idea, usually citing the cost. As time went by, the officers and board members developed an impression of Wilf as somewhat scattered and at times even incompetent, but a consensus to dismiss him never developed. He had spent his life at the temple, and was an active participant in the religious services as well as the daily office work. In short, there was a deep level of trust, and no one ever fathomed that what was happening was actually occurring.

The matter was finally discovered in late 1999, thanks to a new, inquisitive staff member and the temple's then-president. Donna Rosenthal, who had long been a volunteer at the temple, was hired as the office manager in August 1999. She immediately saw that things were wrong -- vendors were complaining that their bills were not being paid, congregants were complaining that their donations were not being acknowledged, and there was no computerized bookkeeping system. With regard to every complaint, Shusterman and Wilf insisted that the complainer was wrong.

Rosenthal saw that the receptionist, Barbara Tomkin Flesher, immediately gave all mail to Shusterman, who opened

all of it. In particular, Rosenthal saw that credit card bills arrived for Wilf, even though the temple had no credit card accounts, and Bell Atlantic Mobile bills were delivered, even though the temple had no authorized cell phones.

Rosenthal observed that Shusterman and Wilf were always together; whatever one knew the other knew. She said Shusterman seemed to hold others in contempt; she and Barry and Barbara Wilf would mock and laugh at congregants behind their backs.

Rosenthal became convinced there was another account to which money was being siphoned. Indeed, she was so suspicious that at home she looked at the canceled checks for her own donations to the synagogue over the years, to see where the money was going; all of her checks were properly deposited.

Rosenthal also took her suspicions to the temple's president, Carol Einhorn. Einhorn in turn directed that the temple's mail be sent to a post office box instead of directly to the temple. Einhorn picked it up and brought it to the temple to open it. On the first day she did that, Betty Shusterman insisted on standing next to Einhorn as

Einhorn opened the mail. One item of mail was a bill from Bell Atlantic Mobile for cellular phone service for 10 people, including Wilf, Wilf's wife and mother, and Shusterman, her husband, son, and daughter-in-law. When Einhorn asked Betty Shusterman about this, given that the temple had no authorized account with Bell Atlantic Mobile, Shusterman replied that it was "just a phone bill."

Einhorn then found correspondence from Harleysville National Bank, whose accounts Wilf and Shusterman were supposed to have ceased to use. Einhorn inquired directly of the bank, learning of the active Breakfast Club account. Wilf and Shusterman were dismissed on February 4, 2000. At a subsequent meeting with Wilf and Shusterman on February 25, 2000, requested by Wilf's attorney, Wilf admitted to temple officials that he embezzled funds. He stated that he stole between \$100,000 and \$200,000. Betty Shusterman denied any involvement. Betty's husband, Jack, who also attended the meeting, offered to make restitution of between \$60,000 and \$70,000 to settle the entire matter, an offer which was refused.

After Wilf and Shusterman were terminated, temple officers Alan Stock, Larry Wanerman, and Louis Lyons went

into Wilf and Shusterman's offices and boxed the contents. Several bank statements from the Breakfast Club account were found in Shusterman's desk. No such statements were found in Wilf's desk.

Wilf continued to contact Leonard Brown, the temple's custodian, in whose name a number of the vendor checks which Wilf cashed were written. Wilf asked Brown to recall that Wilf had cashed checks for Brown which were written by the temple to Brown's employer; that Wilf endorsed and cashed the checks to facilitate the payments to Brown. Brown believed that Wilf was trying to plant an idea in Brown's head regarding events which did not take place, to explain Wilf's theft of checks payable to Brown. Wilf also asked Brown to assist Wilf by removing from the temple boxes of files which were locked in an area behind the stage in the temple auditorium. Wilf said he would "take care of" Brown for helping him. Brown declined, and informed law enforcement agents who recovered the records.

The temple has recovered little of its losses, which we estimate to be at least \$1.2 million. In the fall of 2000, the temple reached an agreement with Summit Bank, in which Summit paid \$28,595.34 for honoring forged checks

written mostly in 1998 and 1999. The parties believed that this was the extent of such checks, although the government's investigation reveals that the true sum of forged Summit checks is much larger. In fact, the total of checks from the Summit operating account which were stolen (either by being deposited in the Breakfast Club account or by being cashed) was over \$200,000. The temple leadership is now trying to reinitiate litigation against Summit, and has also sued Harleysville National Bank, where the temple's operating account was located for most of the relevant period.

The temple also received an insurance payment of \$100,000 from Utica Mutual Insurance Company, which was the extent of the temple's coverage under a directors and officers policy.

The temple also suffered collateral harm which cannot be quantified. For example, a recent president, Alan Stock, said that in the months after Wilf's conduct was uncovered numerous congregants and vendors would claim that money the temple was trying to collect had actually been paid to Wilf, or that they had separate deals with Wilf reducing their liabilities. The temple was compelled to

accept all such explanations without any knowledge whether they were true or not.

B. Methods of Theft.

The particular details of the thefts are as follows.

1. Stolen donations and other checks to the temple.

Wilf stole checks which were given to the temple, and converted them for his own purposes. He deposited them in an account he created called the "Temple Sinai Breakfast Club" account.

On July 6, 1993, without authorization from the temple, Wilf opened an account at Harleysville National Bank in the name of Temple Sinai Breakfast Club, account no. 04-1416361. Over the succeeding six and a half years, he deposited numerous checks, either checks from donors made payable to the temple, or checks from the temple's general account made payable either to Temple Sinai or to vendors of the temple.

When depositing the checks, Wilf used a stamp which read "For deposit only Temple Sinai 1416361" (the Breakfast Club account number). He did not have authority from the

temple's leadership to endorse or deposit checks in this manner; his authority was limited to controlling the temple's known accounts, for which only officers (not he) had signature authority and appropriate resolutions had been provided to the bank. His scheme involved opening an account with a name similar to that of the temple -- "Temple Sinai Breakfast Club" -- and hope neither the bank nor the check writers noticed when checks payable to "Temple Sinai" were deposited in the account with an endorsement reading "Temple Sinai." The scheme worked for years.

There were deposits totaling \$699,771.65 in the Breakfast Club account between late 1993 and the end of 1999. The deposits included hundreds of donations and other payments to the temple. Wilf took for himself scores of donations made in memory of deceased relatives, and in honor of birthdays, bar and bat mitzvahs, baby namings, and similar celebrations. He took money paid to the temple pursuant to donor's wills, and other obligations owed to the synagogue. In addition, as explained at greater length in the next subsection, the deposits included money stolen directly from the temple's operating account through checks made payable to "Temple Sinai" and to various vendors.

Specifically, the stolen checks were comprised of the following:

Contributions to temple (688 checks)	105,604.64
Checks from operating account to "Temple Sinai" (83 checks)	423,702.48
Checks from operating account to vendors and other third parties (40 checks)	73,880.80
Checks from estates (9 checks)	38,100.00
Jewish Federation (10 checks)	24,925.00
Closing of pre-1994 First Fidelity accounts (3 checks)	18,541.84
State of Israel (8 checks)	3,983.34
City of Philadelphia (1 check)	2,590.21
Commonwealth of Pennsylvania (1 check)	2,971.34
Missing deposited items (18 checks)	5,472.00

The term "Breakfast Club" which appeared on the illicit account was familiar at the temple; it was the name applied to a group of men who gathered every morning for a prayer service. They served food such as bagels and coffee after the service, and many years ago instituted a collection to pay for the refreshments. Indeed, the Breakfast Club records show small checks paid at regular intervals to Larry Allen, who made the food purchases.

Allen received a total of \$2,538.49 from the Breakfast Club account from October 4, 1993 until December 7, 1999. Allen said that he knew of no reason that anyone else should get money from the account, as he made all food purchases from 1979 onward. He just asked Wilf for a check and always received one as requested.

With the exception of checks paid to Bell Atlantic for the cell phone account, almost all of the rest of the money deposited in the Breakfast Club account was withdrawn in cash, through checks made payable to cash and signed by Wilf, the only authorized signatory on the account.²

² From the checks totaling \$699,771.65, Wilf withheld \$15,869.07 in cash at the time of making the deposits. The remaining money was deposited, and then all withdrawals were by check.

The indictment includes charges of bank fraud and mail fraud. The mailings are pertinent to the Breakfast Club account, through which \$700,000 was stolen. These mailings consisted of the printed checks for the account, which were sent by the printer by mail and then used by Wilf to withdraw the stolen money, and the monthly bank statements for the account.

The establishment of the "Temple Sinai Breakfast Club" account was an essential part of the fraudulent scheme. In order to deposit and thereby steal checks from donors and others made payable to Temple Sinai, Wilf had to open an account with a similar name. Further, in writing checks for many thousands of dollars from the Temple Sinai operating account to "Temple Sinai," Wilf again needed an account in

2. Checks to "Temple Sinai".

Between September 14, 1993 and March 29, 1999, there were 83 checks written from the Temple Sinai operating account payable simply to "Temple Sinai," which were deposited in the Breakfast Club account. The checks totaled \$423,702.48. This was a method of simply stealing money straight out of the temple's operating account. The checks were written by Wilf, Shusterman, and another person acting at their direction.

The checks were generally written at two-week intervals. The checks were each always in the thousands of dollars, ranging from \$2,000 to \$10,000, greatly exceeding the typical false vendor checks which Wilf took from the operating account and directly cashed (those were usually in the \$100-500 range).

which such checks could plausibly be deposited. It was necessary for Wilf to have the Breakfast Club account maintained in an orderly way, to avoid suspicion. In part, he had to provide Harleysville with the Temple's mailing address for the account, knowing that every legitimate business account must have a mailing address, and that an account which purportedly conducted the business of Temple Sinai must have that institution's address. Wilf and Shusterman then took steps, according to witnesses, to assure that only they opened any bank statements mailed to the temple.

Beginning in April 1999, the method changed -- instead of making large checks from the operating account payable to "Temple Sinai," similarly large checks were instead made payable to vendors and deposited in the Breakfast Club account. There were 40 such additional checks totaling \$73,880.80.

Checks from the temple's operating account were to be signed by two members of the temple's board of directors. Wilf and Shusterman were not signatories. The signatures on the temple's checks payable to "Temple Sinai" deposited in the Breakfast Club account were forged. Similarly, when temple checks were made payable to vendors and deposited in the Breakfast Club account, the vendors' endorsements were forged.

The names of officers Carol Einhorn and Nathan Relles were those most often forged as signatories of the checks. These witnesses have identified the forgeries, and state that the forgeries improved as the years went by, as the thief gained experience.

3. Checks to vendors.

From at least the beginning of 1994, Wilf approximately every two weeks had about 10 checks issued

from the operating account made payable to various vendors, and also to petty cash. The checks were usually in the low hundreds each, up to \$1,000. He cashed them together at Harleysville National Bank or, later, at Summit Bank, at the same time, along with his own biweekly paychecks and those of his wife and Betty Shusterman. These 1,061 checks to vendors totaled \$464,815.01. Approximately 85% of the checks were cashed at Harleysville, and the remainder at Summit.

The vendors included a janitorial service, landscaper, summer camp employees, providers of office and school supplies, maintenance men, an installer of playground equipment, and a supermarket. All have been interviewed by the IRS and attested that they did not receive the checks in question; that is apparent from comparing the endorsements on the checks they actually received for their services with those on the checks which were cashed at Harleysville and Summit.

Indeed, the amounts stated on the checks which Wilf cashed were not owed to the vendors at all. Many received other checks (though usually very late) for their services. Wilf simply wrote additional checks to the same vendors as

another means of siphoning money from the temple operating account. Others were individuals who worked at the temple only occasionally (such as teachers and students who assisted at the temple's summer camp), to whom Wilf had checks written during other seasons; and were employees of the temple's janitorial service who were actually compensated directly by their employer.

Marilyn Stock (temple officer Alan's mother) was a part-time employee for the past 20 years. Every week, she was given invoices from vendors to whom to write checks; she completed the checks, and dated them with the current date. She then gave them to Shusterman to obtain authorized signatures of temple officers on the checks.

Also, Wilf periodically gave her a piece of paper listing additional checks to write. These were the bogus vendor checks. Stock never suspected anything; she completed the checks and gave them to Shusterman as well.

Temple treasurer Lewis Lyons, who signed many of the checks, also did not suspect anything. He often saw the slip of paper attached to the vendor checks, and accepted this as sufficient back-up for the payments.

The head teller at the Harleysville branch in

Horsham, Pennsylvania, where most of the checks were cashed, was interviewed. She explained that the bank had a standard practice of cashing third-party checks brought to the bank by known employers, as a service to employers cashing checks on behalf of employees. As Wilf was a known customer, this courtesy was routinely extended to him.

On some of the checks cashed at Harleysville, Wilf forged the endorsement of the payee before cashing the check. But most of the time, he simply wrote his own initial and had no problem cashing the check. At Summit, in contrast, he always first forged the endorsement of the payee and then added his own signature.

In summary, Barry Wilf obtained cash in two ways: (1) he put stolen donation and other checks, along with temple checks payable to "Temple Sinai" and some vendors, in the Breakfast Club account, from which he withdrew cash; and (2) every two weeks or so he took a separate stack of bogus checks payable from the temple operating account to vendors to a teller at Harleysville or Summit and received more cash. These practices, during the period from late 1993 through the end of 1999, netted over \$1 million in cash.

As stated, when Wilf went to Harleysville or Summit

with the pile of checks he also took the paychecks for himself and his wife, and for Betty Shusterman. It is evident that Shusterman gave him her check to cash -- even though she had her own bank account -- then he returned and gave her more cash in return.

4. The cell phone account.

The Wilfs' and Shustermans' payment of their cell phone bill does not represent additional theft -- the money they used came from the Breakfast Club account or other stolen cash, which is the same proceeds described above. But the facts regarding the cell phone account are significant in illustrating the unusually close and conspiratorial association among the Wilf and Shusterman families, and Wilf and Shusterman's knowing and illicit use of temple money for their private gain.

The Bell Atlantic cell phone account was established in the late 1980's, in the name of "Temple Sinai" (although no officer knew about it and none ever approved it). At the time it was discovered by the temple leadership in January 2000, there were 10 phones on the account, used by Barry Wilf, his wife, Barbara, and his mother, Sara; and by Betty Shusterman, her husband, Jack,

her son, Denis, Denis' wife, Mindy, and Betty and Jack's teenage grandson, Adam. The phones were used extensively (particularly by Denis Shusterman), producing bills often in the thousands of dollars per month.

From June 1994 through June 1997, virtually all charges for the "Temple Sinai" cell phone account were paid by check from the Breakfast Club account. Checks from the Breakfast Club account related to this cell phone account continued through the end of 1998, and were interspersed with payments Wilf made on various credit cards (the bills of which in turn were paid with money derived from the Breakfast Club account). In 1999, Wilf used his credit cards to pay the cell phone bills and used stolen money to pay his credit card balances.

In terms of direct payments from the Breakfast Club account, there were \$55,252.75 in checks from the Breakfast Club account to Bell Atlantic between October 13, 1993 and October 20, 1998. Wilf used his credit cards for approximately \$10,000 in additional payments.

5. Retirement contributions.

Wilf and Shusterman stole money through an additional method as well. Under Wilf's contract, the

temple was obligated to contribute 7% of his salary to a 401(k) plan. Under this plan, Wilf was entitled to approximately \$4,500 per year; he exceeded that in 1994 (taking \$12,000), 1995 (\$6,000), 1996 (\$10,000), 1998 (\$12,000), and 1999 (\$17,000), by issuing larger checks from the temple to the financial institution at which his retirement accounts were held.

The temple had no obligation to make any retirement contribution for Shusterman. Nevertheless, she wrote temple checks making numerous pension contributions for herself, usually at the same time that the contributions on Wilf's behalf were made. In this manner, she stole \$89,000 between 1994 and 1999.³

Moreover, Wilf and Shusterman did not actually deposit this money in qualifying retirement accounts;

³ The indictment mistakenly states that Shusterman, like Wilf, was entitled to a retirement contribution equivalent to 7% of her pay. In truth, Shusterman was an at-will employee without a contract, and without any agreement to receive retirement benefits. She and Wilf simply put money in Shusterman's retirement accounts whenever Wilf received a check, and at additional times as well. The money given to Shusterman's investment accounts was a total theft. Further, even if Shusterman had been entitled to contributions equaling 7% of her pay, the amount she took was many tens of thousands of dollars in excess of that calculation.

through Shusterman's stockbroker husband, Jack, they put the money into brokerage accounts which each controlled. The IRS is therefore holding them liable in this case for the taxable value of the entire contributions.

C. Use of the Stolen Money.

As stated above, Wilf and Shusterman stole at least \$1.2 million from Temple Sinai between 1993 and 2000. These funds came from stolen donor checks and money removed from the temple's operating account. This memorandum has already discussed some of the uses of the stolen money -- more than \$60,000 was used to pay for the Wilf-Shusterman cell phones, and over \$120,000 consisted of undeserved retirement contributions directed to their investment accounts at brokerages.

Another substantial part of the theft -- at least \$270,000 -- was used to pay the Shustermans' and Wilf's obligations in connection with the failed delicatessen business. As mentioned above, Wilf and Jack and Betty Shusterman were partners in a failed delicatessen venture which ended in 1993. The short-lived effort produced years of debt and litigation, the expense of which Wilf and the Shustermans paid using money traced to the Temple Sinai

theft. In essence, Barry Wilf and Betty Shusterman stole money from their employer to solve their mutual business woes. Wilf paid at least \$92,624.26 to banks, lawyers, and the like, while Jack and Betty Shusterman paid at least \$179,528.71. All of these expenditures would not have been possible without the Temple Sinai money.

Wilf and Betty Shusterman roughly split the rest of the stolen loot. The figures cannot be stated with precision, because so much of the money was removed and spent in cash, but an exhaustive government investigation revealed a clear picture of what each received and how each spent the money.

Besides the illicit Temple Sinai Breakfast Club account at Harleysville National Bank, Wilf also established a personal account at Harleysville in his own name. From the roughly \$700,000 deposited in the Breakfast Club account at Harleysville (through stolen donor checks and checks from the temple's operating account), Wilf withdrew \$186,019.08 in cash. He also transferred \$432,471.67 to his personal account at Harleysville.

Wilf also deposited \$99,483.80 in cash in his personal Harleysville account. This could have come from

the cash withdrawals from the Breakfast Club account, or from the separate \$464,815.01 in vendor checks which Wilf cashed at teller windows.

Using the \$531,955.47 in deposits in his personal account which came either directly from the Breakfast Club account or in cash, Wilf, over a seven-year period, used the money for personal expenses. He spent lavishly on vacations (very frequently to Aruba, where at one point he bought a time-share condominium interest), on home electronics, and on automobiles. To make many of these expenditures, he opened more than ten credit card accounts, and paid the bills for those credit cards from the personal Harleysville account.⁴

⁴ The evidence suggests that Wilf concealed his illegal activity from his wife, Barbara. The two maintained a joint checking account (first at Harleysville and then changed in 1997 to Main Line Bank), which was used for all normal household expenses (mortgage, utilities, school expenses, etc.). Similarly, they maintained a credit card account at Citibank which was also used for normal household expenses, such as clothing. This credit card bill was paid from the joint bank account. All of the statements for these accounts were mailed to the Wilfs' home. The money deposited in the joint checking account to cover all of this -- between \$30,000 and \$40,000 per year -- would easily be covered by Barry Wilf's take-home income from his job at Temple Sinai. (At present, the government possesses only a portion of these joint account records. It is endeavoring to obtain the missing records from the banks prior to Betty

The question remains regarding what happened to all the other cash which Barry Wilf stole from Temple Sinai. As stated above, Wilf obtained \$186,019.08 in cash from the Breakfast Club account, plus \$432,471.67 which he transferred from that account to his personal account at Harleysville, plus \$464,815.01 in cash which he gathered by cashing third-party checks at teller windows. That is a total of \$1,083,305.76.⁵ Of this amount, roughly half -- \$531,955.47 -- went to Wilf's personal Harleysville account, and was spent.⁶

Shusterman's trial. However, the pattern of the usage of the accounts is abundantly clear from the already available records.)

In contrast, as explained above, Wilf opened a separate account in his name alone at Harleysville to deposit over \$500,000 in stolen proceeds. Wilf directed that the statements for this account be sent to the temple, not his home. He also opened more than ten credit card accounts in his name alone, through which he spent much of the stolen proceeds. The statements for those accounts were sent to the temple as well.

⁵ The remainder of the total \$1.2 million in theft in this case consists of other checks written from the Breakfast Club account, such as for the cell phones, and the "retirement" money stolen directly from the operating account.

⁶ As stated above, Wilf and Shusterman used a good deal of money to pay expenses related to the failed deli. Approximately \$57,000 came from the money in Wilf's personal

The answer regarding what happened to the other half of the money is that it went to Wilf's co-conspirator, Betty Shusterman. That will be established through extensive evidence to be offered at Shusterman's upcoming trial, including evidence of cash deposits in her accounts and additional cash expenditures greatly in excess of her legitimate means. Shusterman, like Wilf, used the money to live beyond her means.

That Barry Wilf did not spend more than the \$531,955.47 in stolen money deposited in his personal Harleysville account (or the expenditures from his joint accounts which are roughly covered by his legitimate pay) is confirmed by the fact that the government, despite an intensive investigation, did not find any evidence of any other cash obligations of Wilf. Indeed, his lack of access to more money besides that he spent through the personal

Harleysville account.

Besides the deposits in Wilf's personal Harleysville account, Wilf also deposited \$30-40,000 per year in his and his wife's joint checking account. But it must be recalled that Wilf was legitimately entitled to that amount from his Temple Sinai paycheck, and he cashed that paycheck at the bank every two weeks along with Betty Shusterman's paycheck and stolen vendor checks.

Harleysville account is confirmed by his credit card records.

As stated above, Wilf used a large number of credit cards to make expenditures which were paid from the personal Harleysville account, using stolen money. But during the years in question, Wilf's credit card debt actually increased. For example, Wilf's credit card indebtedness soared by \$80,000 just during the three years from the end of 1996 until the end of 1999, even while he was systematically stealing much larger amounts from Temple Sinai.

Further, Wilf would open new credit card accounts (like one at Circuit City and another at Diner's Club) just to purchase home electronics (at prices ranging between \$500 and \$4,000), and then pay off the purchases over a long period of time. This shows that he did not have any additional cash available to him, or else this conduct would be senseless. Indeed, Wilf actually took large and regular cash advances on the credit cards -- a total of at least \$160,000 during the same six-and-a-half years charged in the indictment -- and paid vast finance charges on the ever-increasing balances -- well over \$50,000 during the same

time.

All of this is inconsistent with the conduct of a person who has hundreds of thousands of dollars in additional cash available to him besides that he put in his personal Harleysville account. In short, even the funds he took from the Temple Sinai theft -- over \$500,000 -- were insufficient to support the lifestyle he wanted. He had to borrow more, given his obligation to share the stolen money with Betty Shusterman.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a true and correct copy of the attached Government's Plea Memorandum on counsel for the defendant by first class mail, postage prepaid:

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